

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
THEODORE J. VOGEL	:	DETERMINATION
	:	DTA NO. 818615
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax	:	
Law for the Years 1994 and 1995.	:	

Petitioner, Theodore J. Vogel, 24 Bridge Street, Colebrook, New Hampshire 03576, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1994 and 1995.

Pursuant to 20 NYCRR 3000.9(b), by notice of motion dated September 20, 2001, the Division of Taxation ("Division") moved for summary determination on the grounds that there were no material and triable issues of fact presented by the pleadings, and the uncontroverted facts mandated a finding in the Division's favor. Petitioner failed to file a response to the motion. His response was due on October 22, 2001, which date commenced the 90-day period for issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel). After due consideration of the record, Gary R. Palmer, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed petitioner's claim for refund of personal income tax for the years 1994 and 1995.

FINDINGS OF FACT

1. Petitioner failed to file timely New York State nonresident income tax returns for 1994 and 1995.

2. Petitioner filed his 1994 and 1995 New York State nonresident income tax returns on or about November 30, 1999. By these late-filed returns, petitioner sought a partial refund of the income tax withheld from his wages for the years 1994 and 1995 in the amounts of \$2,980.50 and \$2,704.69, respectively.

3. The Division issued notices of denial of refund to petitioner for tax years 1994 and 1995 on September 18, 2000 and September 11, 2000, respectively.

4. In his petition Mr. Vogel seeks to attribute the cause of his late-filed returns to his illness as referred to in the attached letter of his personal physician, who described a “multitude of medical illnesses” which afflicted Mr. Vogel since “at least 1991.” Dr. McLay stated that, “the side effects of the medications and the rigors of the diseases” rendered Mr. Vogel unable “to manage his financial affairs in a diligent or timely manner.” Petitioner further advised that the Internal Revenue Service had allowed his claim for refund and opined that “New York State Law should be consistent with the Federal Law.”

CONCLUSIONS OF LAW

A. 20 NYCRR 3000.9(b) provides, in part, as follows:

After issue has been joined . . . , any party may move for summary determination The motion shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. The motion shall be denied if any party shows facts sufficient to require a hearing of any material and triable issue

of fact.

B. Tax Law § 686 provides, in relevant part, as follows:

(a) General. - The commissioner of taxation and finance, *within the applicable period of limitations*, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter on the person who made the overpayment, against any liability in respect of any tax imposed pursuant to the authority of this chapter or any other law on such person if such tax is administered by the commissioner of taxation and finance The balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the commissioner of taxation and finance approved by the comptroller. The comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the commissioner of taxation and finance. (Emphasis added.)

C. There is no dispute that the amount of tax withheld from petitioner's wages for 1994 and 1995 exceeded his tax liability for each of said years, thus resulting in the overpayments reported by petitioner in his late-filed returns. The Division's denial of petitioner's claims for refund of his overpayments is based on Tax Law § 687 which imposes limitations on credits or refunds of overpayments as follows:

(a) General - Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim Except as otherwise provided in this section, if no claim is filed, the amount

of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

* * *

(e) Failure to file claim within prescribed period. - No credit or refund shall be allowed or made, except as provided in subsection (f) of this section or subsection (d) of section six hundred ninety, after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this article.¹

* * *

(i) Prepaid income tax. - For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment.

D. Tax Law § 687(a) required petitioner to file his claims for refund within the later of three years from the time each of his returns were filed or two years from the time the tax for each year at issue was deemed to have been paid. The only tax payments for the years 1994 and 1995 were the amounts withheld from his wages for each year. Under Tax Law § 687(i) these amounts were deemed to have been paid on April 15th of the year following the close of each year at issue. Petitioner's 1994 personal income tax return was due to be filed not later than April 15, 1995, and his 1995 return was due to be filed not later than April 15, 1996. Petitioner's 1994 and

¹The specified exceptions, Tax Law § 687(f) and § 690(d), do not apply to this case. The former (section 687[f]) pertains to the filing of a timely petition contesting a statutory Notice of Deficiency, and allows for a determination that an overpayment has been made for the taxable year in question notwithstanding the determination of a deficiency for such year. The latter (section 690[d]) pertains to circumstances where a Notice of Deficiency is disallowed, in part or in whole, upon review, and provides that the amount so disallowed may be credited or refunded without making a separate claim therefore. Since there is no deficiency determination at issue in this proceeding, neither of these exceptions apply.

1995 refund claims were included as part of his 1994 and 1995 income tax returns, both of which were filed in November 1999. It follows that petitioner's refund claims were timely filed in accordance with Tax Law § 687(a), as having been filed within three years of the filing of his returns.

E. Notwithstanding the timeliness of petitioner's refund claims, said claims were properly denied by the Division. Where, as here, the refund claims were made concurrently with the filing of petitioner's 1994 and 1995 personal income tax returns, Tax Law § 687(a) limits the amount of any refund to the amount of tax paid within the three-year period immediately preceding the dates of the filing of petitioner's refund claims (*see, Matter of Petrovich*, Tax Appeals Tribunal, January 20, 2000). Since petitioner's payments of tax via withholding for the years at issue occurred more than three years before the November 1999 filing of his claims for refund, Tax Law § 687(a) bars any refund to petitioner for the years at issue.

F. There being no material and triable issues of fact requiring a hearing, the Division's motion for summary determination is granted.

G. The petition of Theodore J. Vogel is denied and the Division's notices of disallowance of petitioner's claims for refund are sustained.

DATED: Troy, New York
November 8, 2001

/s/ Gary R. Palmer
ADMINISTRATIVE LAW JUDGE